IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

NO. 2011-CA-01414-COA

GUY E. EVANS **APPELLANT**

v.

JOEL W. HOWELL, III **APPELLEE**

DATE OF JUDGMENT:	11/10/2010
TRIAL JUDGE:	HON. WINSTON L. KIDD
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT:	JAMES D. SHANNON JAMIE NICOLE HARDISON-EDWARDS KATHRYN LINDSEY WHITE
ATTORNEYS FOR APPELLEE:	CLIFFORD B. AMMONS PAUL STEPHENSON
NATURE OF THE CASE:	CIVIL - LEGAL MALPRACTICE
TRIAL COURT DISPOSITION:	SUMMARY JUDGMENT GRANTED IN FAVOR OF APPELLEE
DISPOSITION:	AFFIRMED: 03/05/2013
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

EN BANC.

GRIFFIS, P.J., FOR THE COURT:

¶1. Guy E. Evans appeals the grant of summary judgment in favor of Joel Howell. The trial court determined that the statute of limitations for a legal-malpractice claim had expired before the complaint was filed. Evans argues that the grant of summary judgment was not proper. We find no error and affirm.

FACTS

¶2. Robert J. Giordano and Evans owned and operated several businesses. They formed Evans/Giordano Inc. ("EGI") to sell insurance and related products. Giordano and Evans

each owned fifty percent of the stock in EGI. Joel Howell performed legal services for EGI and advised Giordano and Evans about various corporate and other legal issues.

¶3. In 1996, Giordano and Evans had incorporated two other businesses: Safety Risk Services Inc. ("SRS"), and Insurance Premium Services Inc. ("IPS"). Thus, Giordano and Evans were the sole stockholders of three corporations, EGI, SRS, and IPS. EGl was a profitable entity, while SRS and IPS were new companies with little or no assets.

¶4. Giordano and Evans wanted to enter a buyout agreement. In the event of the death of either Giordano or Evans, this agreement would allow the surviving stockholder to purchase all stock owned by the deceased stockholder. Likewise, the estate of the deceased stockholder would be required to sell the stock to the surviving stockholder. The agreement would be funded by the purchase of life insurance policies on the stockholders. Giordano and Evans asked Howell to prepare this agreement.

¶5. On August 16, 1996, Giordano and Evans signed a "Purchase and Sale Agreement" (the "1996 agreement"). This agreement was prepared by Howell. It provided:

> Guy E. Evans and Robert J. Giordano are sole stockholders of Evans/Giordano, Inc., a Mississippi corporation (hereinafter referred to as the Corporation, each owning fifty percent (50%) of the stock of the Corporation.
>
> The purpose of this Agreement is twofold: (a) to provide for the purchase by the survivor of the decedent 's stock interest in the Corporation; and (b) to provide the funds necessary to carry out such purchase.
>
> It is, therefore, mutually agreed by Guy E. Evans and Robert J. Giordano as follows:
>
> 1. If either stockholder should desire to dispose of any of his stock in the Corporation during his lifetime, he shall first offer in writing to sell his stock

to the other stockholder. The offer shall be based on a price determined in accordance with the provisions of paragraph 5 hereof. . . .

2. The parties hereto are insured by several policies, a schedule of which is attached hereto and incorporated by reference herein as Exhibit "A." . . .

3. This Agreement shall extend to and shall include all additional policies issued pursuant hereto; such additional policies shall be added to the list in Schedule "A," attached hereto.

4. Upon the death of either stockholder, the survivor shall purchase and the estate of the decedent shall sell the stock interest now owned or hereafter acquired by the stockholder who is the first to die. The purchase price of such interest shall be computed in accordance with the provisions of paragraph 5 of this Agreement.

5. The outstanding capital stock of the Corporation consists of 1,000 shares which are owned and held by the stockholders as follows:

Guy E. Evans . . . . . 500 shares
Robert J. Giordano . . . . . 500 shares

Unless and until changed as hereinafter provided, the value of each share of stock of the Corporation held by each stockholder shall be $1,500.00. Said value includes an amount mutually agreed upon as representing the goodwill of the Corporation as a going concern. Within thirty days following the end of each fiscal year, Guy E. Evans and Robert J. Giordano shall redetermine the value of each share of stock. Such value shall be endorsed on Schedule B, attached hereto. . . .

6. Each stockholder agrees that the proceeds of the policies subject to this Agreement shall be applied toward the purchase price set forth above. . . .

9. This Agreement may be altered, amended or terminated by a writing signed by both stockholders. . . .

¶6. Although Giordano and Evans jointly owned two other companies at the time, SRS and IPS, the 1996 agreement only applied to the purchase and sale of EGI stock.

¶7. Between 1996 and 2004, Evans and Giordano formed two new corporations:

Insurance Network Services Inc. ("INS"), and Evans/Giordano of Florida Inc. ("EGF"). Giordano and Evans operated INS, EGF, SRS, and IPS as "sister companies" of EGI.

¶8. By 2004, the sister companies were gaining success and bringing in significant income and profits. In September 2004, Giordano asked Howell to draft a new buyout agreement. Howell drafted a new "Purchase and Sale Agreement" (the "2004 agreement") and provided it to Giordano and Evans. This agreement was to provide that the surviving stockholder purchase, using insurance proceeds, the deceased stockholder's interest in all five companies for $3,000,000. The proposed 2004 agreement was never signed by Giordano and Evans.

¶9. In March 2005, Giordano and Evans asked Howell to draft another agreement (the "2005 agreement"),[1] which read in its entirety:

> The parties to the buy/sell agreement of 1996 agree that, pending completion of a new agreement, the prior business valuation is hereby increased to three million dollars, with life insurance policies currently in place in that amount.

Evans and Giordano signed the 2005 agreement.

¶10. Giordano died on May 25, 2006. Thereafter, Evans filed a claim for the life insurance death benefits payable as a result of Giordano's death. On August 8, EGI received two checks from Guardian Life Insurance Company of America in the amounts of $2,013,541.60 and $1,006,770.80.

¶11. On November 1, 2006, Giordano's estate filed suit against Evans in the Madison County Circuit Court. Giordano's estate claimed that the $3,000,000 from Giordano's life

[1] Evans's brief refers to this as the "2005 *temporary* agreement." (Emphasis added).

insurance policy was for the purchase of Giordano's EGI stock only, not Giordano's interest in the sister companies. Evans claimed that the insurance proceeds covered not only Giordano's interest in EGI, but also Giordano's interest in the sister companies because these companies were identified in the 2004 agreement and included in the most recent valuation. Evans settled with Giordano's estate and paid more than the $3,000,000 that he received in life insurance proceeds for the stock in all of the corporations jointly owned by Giordano and Evans.

¶12. On May 13, 2009, Evans filed his complaint for legal-malpractice against Howell. Evans alleged that Howell negligently failed to prepare the 2005 agreement to cover all corporate entities formed by Giordano and Evans. Further, Evans argued that the problems arising from Howell's negligence in drafting the "referenced documents" surfaced after the death of Giordano. He claimed Howell knew or should have known that the sister companies would be involved in the purchase and sale agreement, and he was specifically so instructed. As a result of Howell's failure to amend the purchase and sale agreement, Evans was forced to pay money in excess of the purchased life insurance for the stock of the deceased Giordano. But for Howell's negligence, Evans claimed, the life insurance purchased on Giordano would have covered the entire cost of Evans acquiring Giordano's stockholder's interest.

¶13. On October 4, 2012, Howell filed a motion for summary judgment. Howell claimed the statute of limitations had expired before Evans commenced this action. After a hearing, the Honorable Winston Kidd, Hinds County Circuit Judge, found the limitations period had

expired and Evans's claim was time-barred. The court entered an order granting summary judgment on November 12, 2010. Evans filed a motion for reconsideration, which was denied by order dated August 19, 2011. Evans then perfected this appeal.

STANDARD OF REVIEW

¶14. Appellate courts review de novo a trial court's grant of summary judgment. *Williamson ex rel. Williamson v. Keith*, 786 So. 2d 390, 393 (¶10) (Miss. 2001). An appellate court examines all evidentiary matters before it "in the light most favorable to the party against whom the motion has been made." *Id.* "If . . . there is no genuine issue of material fact[, and] the moving party is entitled to judgment as a matter of law, summary judgment should . . . be entered in his favor." *Id.* "[T]he burden of demonstrating that no genuine issue of fact exists is on the moving party." *Id.*

ANALYSIS

¶15. Pursuant to Mississippi Code Annotated section 15-1-49 (Rev. 2003), a legal-malpractice claim must be brought within three years after the claim accrued. *Channel v. Loyacono*, 954 So. 2d 415, 420 (¶13) (Miss. 2007). When Evans's legal-malpractice claim accrued, he had three years from that date to file his lawsuit. Evans's complaint was originally filed on May 13, 2009. Therefore, if Evans learned or by reasonable diligence should have learned of his claim before May 13, 2006, his claim is barred by the statute of limitations.

¶16. Howell argues that the statute of limitations began to run when the 2005 agreement was signed, on March 10, 2005. Howell contends that the limitations period on Evans's

claim had expired before the complaint was filed. The trial court agreed and granted summary judgment.

¶17. Evans argues that his claim accrued, at the earliest, when the complaint was filed by Giordano's estate against him, which was on November 1, 2006. Thus, since his claim was filed on May 13, 2009, Evans argues that his claim was timely because his complaint was filed before the statute of limitations expired. Evans also argues that March 10, 2005, could not be the accrual date because he was incapable of determining Howell's negligence before Giordano's estate filed a lawsuit and raised the issue.

¶18. The issue of whether the statute of limitations has run is a question of law. *Wayne Gen. Hosp. v. Hayes*, 868 So. 2d 997, 1000 (¶11) (Miss. 2004). Evans does not argue that the trial court was incorrect to decide when the claim began to accrue or that this issue was a mixed question of fact and law that would be appropriate for the jury to decide.

¶19. The Mississippi Supreme Court has adopted the discovery rule for legal-malpractice actions. *Smith v. Sneed*, 638 So. 2d 1252, 1258 (Miss. 1994). As a result, the statute of limitations begins to run on the date that the client learns or, through the exercise of reasonable diligence, should learn of his lawyer's negligence. *Id.* at 1256. Recently, the supreme court followed *Sneed* and reasoned:

> The discovery rule is applied when the facts indicate that "it is unrealistic to expect a layman to perceive the injury at the time of the wrongful act." In *Sneed*, the Court found that the discovery rule applies when it would be impractical to require a layperson to have discovered the malpractice at the time it happened. This is because requiring a layperson to ascertain legal malpractice at the time it occurs would necessitate the retention of a second attorney to review the work of the first.

Bennett v. Hill-Boren, P.C., 52 So. 3d 364, 369 (¶15) (Miss. 2011) (internal citations omitted).

¶20. Both parties cite *Channel v. Loyacono*, 954 So. 2d 415, 420 (¶13) (Miss. 2007), as authority for the question of when a legal-malpractice claim would "accrue." In *Channel*, the plaintiffs were represented by attorneys Paul Loyacono and Scott Verhine in mass tort litigation (Fen-phen). *Id.* at 418 (¶2). The engagement contract authorized Loyacono and Verhine to associate other lawyers to assist them. *Id.* Loyacono and Verhine began settlement discussions with the defendant in "late November and early December 2000." *Id.* at (¶4). They presented settlement offers to their clients, some of whom settled and some of whom did not. *Id.* at 418-19 (¶¶4-5). They negotiated further and ultimately settled all of their clients' cases. *Id.* at 419 (¶5). All of their clients received their settlement funds on January 26, 2001. *Id.*

¶21. Two of the lawyers Loyacono and Verhine associated began to call the clients and challenge the validity of the settlements. *Id.* at (¶¶6-7). In several of the cases, the associated lawyers filed a motion that "accused Loyacono and Verhine of acting dishonestly, negligently, and fraudulently in negotiating the settlements." *Id.* at (¶7). At the hearing, "all of the clients testified that Loyacono and Verhine had acted dishonestly, negligently, and fraudulently in negotiating their settlements[;] each of them testified that they had signed their settlement agreements, received the proceeds, and considered their cases settled." *Id.* at (¶8). In April 2004, the court determined that the cases were knowingly and voluntarily agreed to and were settled. *Id.* at (¶9).

¶22. On January 5, 2004, the clients filed a legal-malpractice action against Loyacono and Verhine. *Id.* at 419-20 (¶10). Loyacono and Verhine field a motion for summary judgment and argued that their claims were barred by the statute of limitations. *Id.* The trial court determined that the claims of malpractice "would have occurred in November and December 2000 when Loyacono and Verhine negotiated and obtained settlement offers and presented them to the clients for acceptance or rejection." *Id.* at 420 (¶11). The court found:

> [T]his Court [has] held that "the statute of limitations in a legal malpractice action properly begins to run on the date the client learns or through the exercise of reasonable diligence should learn of the negligence of his lawyer." This Court has said that the discovery rule is to be applied when "the plaintiff will be precluded from discovering harm or injury because of the secretive or inherently undiscoverable nature of the wrongdoing in question," or it may be applied "when it is unrealistic to expect a layman to perceive the injury at the time of the wrongful act." Given this precedent, it must be determined whether the alleged injury in this case was secretive or inherently undiscoverable, or in the alternative, whether the plaintiffs, as laymen, could not have reasonably been expected to perceive the injury at the time of the alleged wrongful act.
>
> The "secretive or inherently undiscoverable" standard is applicable where there is some piece of physical evidence that is the subject of the test. There is no allegation in this case that there was any physical evidence that was undiscoverable. Therefore, we will focus on the layman standard.

Channel, 954 So. 2d at 421 (¶¶19-20) (internal citations omitted). The court reversed the summary judgment on the ground that it could not determine when all the plaintiffs had notice of malpractice. *Id.* at 423 (¶26).

¶23. Here, there was nothing "secretive or inherently undiscoverable" about Howell's preparation of and the execution of the 2005 agreement. Further, we can determine whether Evans, "as [a] laym[a]n, could not have reasonably been expected to perceive the injury at

the time of the alleged wrongful act." *Id*. at 421 (¶19). With these legal principles in mind, we examine the facts of this case. There are only three documents that are relevant. There are only two documents where Giordano and Evans actually entered a contract.

¶24. The 1996 and 2005 agreements were signed by Giordano and Evans. They both considered only the purchase and sale of EGI stock. The 2004 agreement was not signed, and it considered Evans's and Giordano's stock interests in EGI *and* four other corporations they had formed since 1996 (e.g., the sister companies).

¶25. Howell claims that Evans knew or should have known, simply by reading the 2005 agreement, that the 2005 agreement only provided for the purchase of Giordano's EGI stock. Evans admitted that he read the 1996 and the 2005 agreements. "In Mississippi, a person is charged with knowing the contents of any document that he executes." *Russell v. Performance Toyota, Inc.*, 826 So. 2d 719, 726 (¶28) (Miss. 2002) (citation omitted).

¶26. The 2005 agreement reads:

> The parties to the buy/sell agreement of 1996 agree that, pending completion of a new agreement, the prior business valuation is hereby increased to three million dollars ($3,000,000) with life insurance policies currently in place in that amount.

"The parties" were Giordano and Evans. The "buy/sell agreement of 1996" was what we have termed the 1996 agreement. The "prior business valuation" could only mean the $1,500,000 in the 1996 agreement. Evans admitted in his deposition that the business valuation under the 1996 agreement was the only business valuation that existed.

¶27. It is not in dispute that the 1996 agreement only required the purchase and sale of EGI

stock. Even though Giordano and Evans owned stock in two additional companies, the purchase and sale of the stock of those other companies was not part of the 1996 agreement.

¶28. It was not unrealistic that Evans, or "an intelligent layman familiar only with the basics of English language," understood that the one-sentence 2005 agreement covered only EGI stock because it was specifically tied to the 1996 agreement, which only covered EGI stock and did not mention any of the sister companies. *Warren v. Derivaux*, 996 So. 2d 729, 735 (¶12) (Miss. 2008). Evans cites *Willis v. Maverick*, 760 S.W.2d 642, 645 (Tex. 1988), for the proposition that a "corollary to [an attorney's] expertise is the inability of the layman to detect its misapplication; the client may not recognize the negligence of the professional when he sees it." This principle does not assist Evans. There were only two contracts, and the contract in issue here was only one sentence and thirty-eight words long. There is nothing about the 2005 agreement that would have required Evans to retain a second attorney to review the work of Howell.

¶29. Other cases also provide legal principles that we must consider. In *Stephens v. Equitable Life Assurance Society of the United States*, 850 So. 2d 78, 83 (¶16) (Miss. 2003), the supreme court held that the statute of limitations began to run when the plaintiffs signed insurance contracts. In both *Channel* and *Stephens*, "the plaintiffs were on notice of their claims because proof of the alleged misrepresentation was apparent from the face of the contract." *Archer v. Nissan Motor Acceptance Corp.*, 633 F. Supp. 2d 259, 268 (S.D. Miss. 2007). In *Archer*, because the terms were apparent on the face of the documents and, with due diligence, each plaintiff could have easily determined that he or she had not been offered

what had been bargained for, the discovery rule did not toll the statute of limitations there. *Id.* at 269.

¶30. The trial court determined that Evans knew or should have known of Howell's alleged legal malpractice on March 10, 2005, when he signed the 2005 agreement. Thus, the three-year limitations period had expired before Evans's complaint was filed on May 13, 2009. The circuit court correctly found that the action was time-barred and correctly granted Howell's motion for summary judgment. Therefore, the summary judgment is affirmed.

¶31. **THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

BARNES, ISHEE AND CARLTON, JJ., CONCUR. IRVING, P.J., DISSENTS WITH SEPARATE WRITTEN OPINION, JOINED BY LEE, C.J., ROBERTS AND MAXWELL, JJ. FAIR AND JAMES, JJ., NOT PARTICIPATING.

IRVING, P.J., DISSENTING:

¶32. The majority, finding that the trial court was correct that the statute of limitations had run on Evans's legal-negligence claim, affirms the trial court's grant of summary judgment to Howell. With due respect, I believe that the majority errs, as, based on the evidence presented for and against summary judgment, there is a genuine issue of fact as to when Evans knew or should have known of Howell's negligence. Therefore, I dissent. I would reverse and remand this case for further proceedings. Although the majority has set forth most of the essential facts, I find it helpful to an easy read of this dissent to recite them in a slightly different order.

¶33. Evans and Giordano were the sole stockholders of EGI, a Mississippi corporation.

Each owned a fifty percent interest of stock in EGI. Howell performed a variety of legal services for Evans and Giordano regarding EGI, which included setting up the corporation, drafting corporate documents, and advising Evans and Giordano on various corporate and other legal issues.

¶34. On August 16, 1996, Howell drafted a "Purchase and Sale Agreement" (the 1996 agreement) for Evans and Giordano, which both Evans and Giordano signed. The purpose of this agreement was to allow the surviving stockholder to purchase the deceased stockholder's interest in EGI and to provide for the purchase of life insurance to fund the purchase of the deceased stockholder's interest. Although Evans and Giordano owned two additional companies in 1996, SRS and IPS, the 1996 agreement only applied to EGI. Each share of EGI was worth $1,500. The 1996 agreement valued all EGI stock at $1,500,000.

¶35. Between 1996 and 2004, Evans and Giordano formed two additional corporations, INS and EGF. INS, EGF, SRS, and IPS operated as EGI's sister companies. By 2004, the sister companies were gaining success and bringing in significant income and profits. ***As a result, in September 2004, Giordano requested that Howell draft a new agreement (the 2004 agreement) which would allow the surviving stockholder to purchase the deceased stockholder's interest in all five companies for $3,000,000. The 2004 agreement stipulated that the surviving stockholder would purchase the deceased stockholder's interest in all five companies using the life insurance proceeds***.

¶36. ***Evans and Giordano never executed the 2004 agreement due to ongoing negotiations unrelated to the valuation of the corporations set forth in the 2004 agreement***.

According to Evans, the negotiations involved Giordano's prospective purchase of Evans's interest in all of their companies. Evans and Giordano asked Howell to draft a third agreement in March 2005 (the 2005 agreement) because they would not execute the 2004 agreement until they resolved the prospective buyout. The 2005 agreement reads: "The parties to the buy/sell agreement of 1996 agree that, pending completion of a new agreement, the prior business valuation is hereby increased to three million dollars, with life insurance policies currently in place in that amount." Evans and Giordano executed the 2005 agreement.

¶37. Giordano died on May 25, 2006. Evans received the $3,000,000 life insurance death benefits. Giordano's estate filed suit against Evans in the Madison County Circuit Court, taking the position that the $3,000,000 from Giordano's life insurance policy was for the purchase of Giordano's EGI stock only, not Giordano's interest in the sister companies. Evans, on the other hand, contended that the insurance proceeds covered not only Giordano's interest in EGI, but also Giordano's interest in the other four corporations identified in the 2004 agreement. Nevertheless, Evans settled with the estate, paying more than the $3,000,000 that he received in life insurance proceeds. On May 13, 2009, Evans filed his complaint for legal malpractice, alleging that Howell negligently failed to prepare the 2005 agreement to cover all corporate entities formed by Evans and Giordano.

¶38. The linchpin of the majority's decision to affirm is its view that Evans, as well as any layman of average intelligence, would understand that the 2005 agreement refers to EGI and that Evans should have understood that the agreement references the valuation of EGI only,

changing it from $1,500,00 to $3,000,000. As a consequence, the majority finds that the statute of limitations began to run on March 10, 2005, the day Evans executed the 2005 agreement. I will attempt to explain later in this dissent why I disagree with the majority's position. But I should note at this point that the commencement of the running of a statute of limitations imposes upon an injured party the obligation to commence suit for the redress of the injury suffered or risk being forever barred from doing so. The majority does not explain any injury that Evans suffered in March 2005 immediately upon his signing the agreement that would have allowed him to sue Howell for damages.

¶39. Next, I should point out that what Evans knew or should have known about the 2005 agreement cannot be viewed in a vacuum by a simple reading of the words in the agreement. Rather, knowledge imputed to him must be considered in light of the history between him and Giordano in valuating their businesses and providing capital for the survivor to utilize in the purchase of the other's interest in case of death. Their first venture in this direction involved one corporation —EGI— and then in 2004, all five corporations. When considered against the backdrop of this historical perspective, I believe the 2005 agreement, despite its brevity, is clearly ambiguous.

¶40. What must not be lost in the analysis is that, prior to the drafting of the 2005 agreement, Howell had drafted not only a 1996 agreement, admittedly involving only EGI, which was valued at $1,500,000, with each partner owning a one-half interest, but he also had drafted a 2004 agreement involving all five corporations, valued in the aggregate at $6,000,000, with each partner owning a one-half interest. Evans and Giordano's objective

in making the initial purchase of $1,500,000 in insurance in 1996 was to provide capital for the surviving partner to purchase the deceased partner's interest in EGI, the only profitable corporation at that time. Later, after two other corporations had been formed, making a total of five with the three that were in existence when the 1996 agreement was executed, Evans and Giordano increased their life insurance policies to $3,000,000 each and provided in the 2004 agreement that the surviving partner could purchase the deceased partner's interest in all five corporations for $3,000,000. It is clear to me that the objective that Evans and Giordano were attempting to accomplish in both the 1996 and 2004 agreements was to establish a fair value of the deceased partner's interest in their jointly owned corporations and to provide a funding mechanism that the surviving partner could use to purchase the deceased partner's interest. In 1996, Evans and Giordano had one profitable corporation, EGI. By 2004, they had five. Therefore, in furtherance of their objective that began in 1996, they purchased additional insurance, valued all five corporations at $6,000,000, and provided that the surviving partner could purchase the deceased partner's interest in all five for $3,000,000. ¶41. It is of no moment that the 2004 agreement was not signed, as there is no disagreement that the valuation of all five corporations provided for in the 2004 agreement was what the parties intended. Its value to the resolution of the issue before us lies in the fact that Evans and Giordano had agreed upon a value of all five corporations prior to the execution of the 2005 agreement. Further, there is no dispute that the only reason Evans and Giordano did not sign the 2004 agreement is that Giordano was attempting a buyout of Evans's interest in all five corporations. It is also not disputed that the buyout negotiations

were not stalled over the aggregate value of the corporations. Additionally, there is no evidence or suggestion that Giordano was negotiating the purchase of EGI only. Therefore, when the parties asked Howell to draft the temporary agreement in 2005, it is entirely reasonable that their intention was to make sure that the surviving partner would be able to acquire the deceased partner's interest in all five corporations for $3,000,000 if either of the partners died before the buyout of Evans's interest was completed. It is also reasonable for Evans to believe that execution of the 2005 agreement had accomplished that objective.

¶42. Mississippi Code Annotated section 15-1-49 (Rev. 2003) requires that a legal-malpractice action be brought within three years after the cause of action has accrued. The statute of limitations begins to run on the date that the client learns or, through the exercise of reasonable diligence, should learn of his lawyer's negligence. *Smith v. Sneed,* 638 So. 2d 1252, 1256 (Miss. 1994). The Mississippi Supreme Court has held that the client learns of the negligence "as soon as an injury is sustained as a result of a defendant's alleged culpable conduct." *Id.* at 1254-55. Therefore, it follows that if no injury has occurred, the client cannot be charged with knowledge of the lawyer's negligence.

¶43. I agree with Evans that a genuine issue of material fact exists as to whether Evans knew or should have known of Howell's negligence prior to Giordano's estate raising the issue with the agreement. Prior to that time, Evans had not suffered any injury, nor had he been placed on notice of any potential negligence on the part of Howell. Evans was first placed on notice when Giordano's estate balked at accepting $3,000,000 for Giordano's interest in all five corporations. It is not debatable that the injury occurred in March 2007,

when Evans was forced to pay more than $3,000,000 to acquire all of Giordano's interest in all five of the corporations.

¶44. Our supreme court has held that when "it is unrealistic to expect a layman to perceive the injury at the time of the wrongful act[,]" the discovery rule applies, tolling the statute of limitations for legal malpractice. *Channel*, 954 So. 2d at 421 (¶19) (citations omitted). Although Howell may have committed legal malpractice in March 2005 when he drafted the 2005 agreement, the statute of limitations did not begin to run until Evans had knowledge or, through the exercise of reasonable diligence, should have known of Howell's negligence. As a layman, Evans could not be charged in March 2005 with knowing, without hiring another attorney to review Howell's work product, that the 2005 agreement that Howell had drafted was inadequate to accomplish Evans and Giordano's intended objective. In *Channel,* our supreme court, while discussing its holding in *Sneed*, explained why reasonable diligence does not require such a course of action:

> [I]f the discovery rule were not followed, the client could protect himself fully only by ascertaining malpractice at the moment of its incidence. To do so, he would have to hire a second attorney to observe the work of the first. This costly and impractical solution would but serve to undermine the confidential relationship between attorney and client.

Channel, 954 So. 2d at 422 (¶21).

¶45. "An ambiguity is defined as a susceptibility to two reasonable interpretations." *Dalton v. Cellular S., Inc.*, 20 So. 3d 1227, 1232 (¶10) (Miss. 2009) (citing *Amer. Guar. & Liab. Ins. Co. v. 1906 Co.*, 129 F.3d 802, 811-12 (5th Cir. 1997)). As stated, the majority agrees with the trial judge that the 2005 agreement is clear and unambiguous in that the

alleged misrepresentation is apparent on the face of the 2005 agreement. In my judgment, one could reach this conclusion only by reading the 2005 agreement in a vacuum. The "prior business valuation" language in the 2005 agreement does not specifically refer to either the 1996 valuation of EGI or the 2004 valuation, which included the total valuation of all of the corporations. The reference in the 2005 agreement to the 1996 agreement is a reference to the parties, not to the 1996 valuation. Even though the 2004 agreement was not executed, it is not unreasonable for a layperson to interpret the "prior business valuation" language in the 2005 agreement to be a reference to the $3,000,000 valuation contained in the 2004 agreement, which covered all of the businesses that Evans and Giordano owned in 2004. This is especially true since the 2004 agreement stipulated that the surviving stockholder would purchase the deceased stockholder's interest in all five companies using the life-insurance proceeds, which at that time were $3,000,000. Therefore, the agreement could be read as Giordano's estate read it—to cover only the purchase of Giordano's interest in EGI—or it could be read to cover the purchase of Giordano's interest in all five companies, as stipulated in the 2004 agreement.

¶46. For the reasons presented, I dissent.

LEE, C.J., ROBERTS AND MAXWELL, JJ., JOIN THIS OPINION.